

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BRUCE CORKER, *et al.*,

Plaintiffs,

v.

COSTCO WHOLESALE, *et al.*,

Defendants.

NO. C19-0290RSL

ORDER GRANTING PLAINTIFFS'
MOTION TO COMPEL

This matter comes before the Court on plaintiffs' "Motion to Compel Production of Document in the Form Kept in the Ordinary Course of Business and Without Redactions" (Dkt. # 206), plaintiff's "Motion to Seal Document" (Dkt. # 208), and defendant BBC Assets' "Motion for Protective Order" (Dkt # 211). In response to a request for documents sufficient to identify the volume and price of "Kona" coffee it sold, BBC Assets produced summary documents purporting to provide the requested information. When plaintiffs objected to the form of the production, BBC Asset produced a 2,269-page document that appears to be a spreadsheet converted into a static PDF, with significant redactions obscuring sales information regarding non-Kona brands. Plaintiffs seek to compel production of the spreadsheet as kept in the ordinary course of business and without redactions. In support of the motion, plaintiffs filed under seal an

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1 excerpt of the redacted document.¹ BBC Assets seeks an order protecting from disclosure
2 irrelevant and confidential commercial information contained in the responsive spreadsheets.

3 BBC Assets' production raises two separate concerns. The first involves the conversion
4 of a functional spreadsheet into a series of image files. Pursuant to Rule 34(b)(2)(E)(ii), "unless
5 otherwise stipulated or ordered by the court . . . a party must produce [electronically stored
6 information] in a form or forms in which it is ordinarily maintained or in a reasonably usable
7 form or forms." The advisory committee's comments to the 2006 amendment further clarify the
8 obligations of a responding party:
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10 The rule does not require a party to produce electronically stored information in
11 the form it which it is ordinarily maintained, as long as it is produced in a
12 reasonably usable form. But the option to produce in a reasonably usable form
13 does not mean that a responding party is free to convert electronically stored
14 information from the form in which it is ordinarily maintained to a different form
15 that makes it more difficult or burdensome for the requesting party to use the
information efficiently in the litigation.

16 Fed. R. Civ. P. 34 advisory committee's note (2006). BBC Assets' initial production was plainly
17 insufficient under the rule: the summaries were not in the form in which the information was
18 ordinarily maintained, nor did it have the functionality of the native format that made it so
19 valuable for business purposes and which would enable plaintiffs to use the information
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22 ¹ In response to plaintiffs' motion to seal the excerpt, BBC Assets argues that the document
23 should be withdrawn from the record, rather than unsealed, apparently under LCR 5(g)(6). That
24 provision applies only where the party relying on the document has requested that it be withdrawn if the
25 request for seal is denied. That is not the case here. Plaintiffs rely on the sealed document to show the
nature and scope of defendant's production: the local civil rules do not allow defendant to control the
evidence on which plaintiffs can rely.

26 In the alternative, BBC Assets agrees that the excerpt should remain under seal. Plaintiff's
27 motion (Dkt. # 208) is therefore GRANTED.

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1 efficiently. The PDF images of the spreadsheets suffer from similar problems. Even if the PDF
2 images of the spreadsheet pages are “readable” and “searchable” (Dkt. # 211 at 4), they cannot
3 be sorted or filtered as the original spreadsheet could be. Thus, they are likely not in a
4 “reasonably usable form” for purposes of Rule 34(b)(2)(E). *See Laub v. Horbaczewski*, 331
5 F.R.D. 516, 527 (C.D. Cal. 2019) (“the drafters of Rule 34(b)(2)(E) expected that parties
6 producing electronically stored information would provide it in a form that permitted ‘text
7 searching technologies, like filtering, grouping, and ordering’ so that the requesting parties could
8 organize it themselves”) (citations omitted).²

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10 In its motion for a protective order, BCC Assets implicitly acknowledges the functional
11 limitations of its PDF production and offers instead a report in Excel format that contains all of
12 the relevant information responsive to plaintiffs’ discovery request while filtering/hiding
13 irrelevant and commercially sensitive information regarding non-Kona brands and sales. This
14 brings up the second concern regarding BCC Assets’ production: is a party permitted to redact
15 material from responsive documents? If the redaction is based on the producing party’s unilateral
16 assessment of relevance, the answer is generally “no.” *See Toyo Tire & Rubber Co. v. CIA*
17 *Wheel Grp.*, 2016 WL 6246384, at *2 (C.D. Cal. Feb. 23, 2016) (producing party “may not
18 redact otherwise responsive documents because those documents contain irrelevant material”);
19 *Bonnell v. Carnival Corp.*, 2014 WL 10979823, at *4 (S.D. Fla. Jan. 31, 2014) (the “better,
20 less-risky approach” is not to allow parties “the carte blanche right to willy-nilly redact
21 information from otherwise responsive documents in the absence of privilege, merely because
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25 ² The Stipulated ESI Protocol that BCC Assets negotiated with plaintiffs recognizes that
26 spreadsheets and databases are not easily reviewable in PDF and provides that such files “should be
27 produced in native format.” Dkt. # 207-5 at ¶ 4.e.

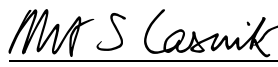
1 the producing party concludes on its own that some words, phrases, or paragraphs are somehow
2 not relevant”). The applicability of the general rule to Excel workbooks and other potentially
3 expansive databases has not been fully explored. While spreadsheets are considered a single
4 “document” under the discovery rules, they are often designed to pivot, storing vast quantities of
5 information regarding disparate business ventures, product lines, marketing outlets, etc., that can
6 then be queried or otherwise manipulated to produce specific reports of interest to the user. At
7 least one court has recognized that, with regards to multi-volume manuals or large documents
8 that are internally separate, “if entire sections are clearly and convincingly irrelevant, they may
9 be redacted.” *Evon v. Law Offices of Sidney Mickell*, 2010 WL 455476, at *2 (E.D. Cal. Feb. 3,
10 2010).
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13 The Court need not resolve this issue because BCC Assets’ refusal to produce (and
14 request for a protective order) is not based solely on a relevance objection. Rather, BCC Assets
15 argues that the information it has withheld is highly confidential and its disclosure in this
16 litigation would put it at a competitive disadvantage. Under Rule 26(c)(1)(G), the Court may, for
17 good cause, issue an order requiring that confidential commercial information not be revealed or
18 be revealed only in a specified way. BCC Assets has shown good cause for preventing disclosure
19 of its customers and price lists for non-Kona branded coffees to its competitors in the coffee
20 industry. But BCC Assets has already stipulated to what the appropriate protections are in such
21 circumstances. The Protective Order entered in this litigation allows BCC Assets to designate as
22 for “Plaintiffs’ Outside Counsel Only” information that it deems inappropriate to be shared with
23 another party for competitive or proprietary business reasons. The parties agreed that this level
24 of protection would be appropriate where the disclosure of information to a competitor would be
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1 highly prejudicial to their businesses: the designation limits the disclosure to plaintiffs' outside
2 counsel. Dkt. # 148 at 3. While a stipulated protective order does not waive a party's right to
3 request additional protections in particular circumstances, BCC Assets has not shown why the
4 agreed restrictions on the way in which commercially-sensitive information will be produced are
5 insufficient or should be altered at this stage of the proceeding.
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8 For all of the foregoing reasons, plaintiffs' motion to compel (Dkt. # 206) and motion to
9 seal (Dkt. # 208) are GRANTED. BCC Assets' motion for a protective order (Dkt. # 211) is
10 DENIED. BCC Assets shall, within seven day of the date of this Order, produce the information
11 contained in the document stamped BCC 000172-002441 in native form and without redactions.
12 BCC Assets may, if appropriate, designate the supplemental production as for "Plaintiffs'
13 Outside Counsel Only" under the terms of the Protective Order entered by the Court on
14 September 18, 2019.
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17 Dated this 27th day of April, 2020.
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20 Robert S. Lasnik
21 United States District Judge
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